

**CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408 AND STATE LAW EQUIVALENT**

February 2, 2009

VIA E-MAIL - darrell.early@deq.idaho.gov

Darrell Early
Idaho Attorney General's Office
2005 Ironwood Dr., Ste. 120
Coeur d'Alene, ID 83815

Re: Wallace Yard and Spur Lines Site

Dear Darrell:

At our meeting on Friday, January 16, you requested a letter to the State of Idaho making a formal proposal on behalf of Union Pacific Railroad Company and BNSF Railway Company (collectively, the "Railroads") that the Railroads fund, and the State implement, the response actions set forth in the March 2008 Environmental Engineering/Cost Analysis (the "EE/CA") for common use areas in the former railroad rights-of-way along Ninemile Creek and Canyon Creek (the "Spur Lines"). This letter is that request.

For residential use areas within the Spur Lines, the State and the Railroads previously have conceptually agreed (subject to final agreement upon specific terms and conditions in the Consent Decree or other formal agreement) that the Railroads would fund and the State would implement the response actions selected in the EE/CA for those areas as part of its Basin Property Remediation Program.

After reviewing the work contemplated for the common use areas within the Spur Lines, the Railroads believe cost and implementation efficiencies would result if the State also implemented that work with Railroad funding. To begin with, the Railroads do not own the Spur Lines; title to the narrow rights-of-way has reverted to the underlying third-party landowners in both residential use areas and common use areas. We understand that the State already has a process in its Basin Property Remediation Program for obtaining access from third-party landowners. There are also efficiencies for implementation of the work because the common use areas are in close proximity, or provide access, to the residential use areas. The work in both areas is similar – sample, remove and/or cap. Addressing both areas together would mean one mobilization instead of two, provide a larger surface area for the State's contractors to work, be less disruptive to the residents, and reduce the possibility that an area that has been cleaned would be re-contaminated by people, vehicles or natural forces carrying contamination from an area that has not yet been cleaned. In addition, this approach allows the State the option to schedule work on the narrow strips of land within the Spur Lines at the same time as work to

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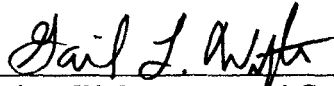
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clean up the surrounding areas, thereby avoiding a situation of a 50-foot-wide clean strip running through a larger contaminated area.

The Railroads propose to use the same budget and funding process for the common use area work that we suggested for residential use areas in our January 13, 2009 proposal. *See* Draft Proposed Residential Use Area Work and Cost Agreement, section 5.

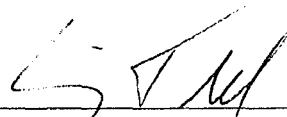
We are available to discuss this proposal in detail with you and other State representatives at your convenience.

Sincerely,



Robert W. Lawrence and Gail L. Wurtzler
for
DAVIS GRAHAM & STUBBS LLP

ATTORNEYS FOR UNION PACIFIC RAILROAD COMPANY



Craig Trueblood
for
K&L GATES

ATTORNEYS FOR BNSF RAILWAY COMPANY

cc: Robert C. Bylsma
Gary L. Honeyman
Pamela Nehring
Bruce Sheppard
Cliff Villa (EPA Region 10)